

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 690 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No.
 2. To be referred to the Reporter or not? No. :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No.
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.
 5. Whether it is to be circulated to the Civil Judge? : NO
No.
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NATIONAL PROJECT CONSTRUCTION CORPORATION LIMITED

Versus

SHRIJEE BUILDERS

Appearance:

MR BS PATEL for Petitioner

MR HD CHUDASAMA for Respondent No. 1

DS AFF.NOT FILED (R) for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 21/09/2000

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. Bhabha Atomic Research Centre - respondent no. 2
- original defendant no. 1 is a Central Government
Undertaking. The respondent no. 2 gave contract for

construction work to the petitioner who entrusted the work to the respondent no. 1 who is subcontractor. The respondent no. 1 filed suit for declaration & permanent injunction that the defendant no.1 is not entitled to and has no right to receive payment from the defendant no.1 as a subcontract is executed between the plaintiff and the defendant no. 2 and the suit has been filed for a permanent injunction restraining the defendant no. 1 Bhabha Atomic Research Centre from making payment of construction work to the defendant no. 2. The plaintiff - respondent no. 1 also filed an application exh. 5 for interim injunction and that application exh. 5 was fixed for final hearing on 3-6-2000. One day earlier i.e. 2-6-2000 the application exh. 24 was filed by the petitioner for interim order with the prayer that the respondent no. 2 has agreed that it will make payment to the petitioner withholding 21 lacs and the respondent no. 2 be directed to comply with the oral commitment. The copy of that application was given to the learned counsel for the respondent no. 2 who made endorsement "prayed time for reply". The copy was not served on the petitioner. The trial Court passed the interim order on the same day without affording any opportunity of hearing to the petitioner though the matter was fixed on the next day for hearing in the following words :

"As per oral understanding the defendant no. 1 agreed that they will withhold 21 lacs which they are not doing, hence the defendant no. 1 is directed to keep the words and withhold the sum of Rs.21 lacs".

3. The contention of the learned counsel for the petitioner is that whether such oral understanding was entered into between the defendant no.1 and the plaintiff or not. That has to be seen and considered after hearing the defendant no. 1 and the defendant no. 2 petitioner. Without ascertaining the oral commitment or understanding and without hearing the petitioner the order has been passed and the petitioner has not been given any opportunity of hearing and even no copy of that application was served on the counsel for the petitioner. Though the application exh. 5 was fixed on 3-6-2000 and there was no extreme urgency for passing such orders, the trial Court passed the impugned order which is prima-facie illegal and is not sustainable in the eye of law and is also against the principles of natural justice.

4. I have carefully considered the contentions of the learned counsel for the parties. It appears that

some contract was given by the respondent no. 2 to the petitioner for making construction. The petitioner is a Central Government Undertaking and the petitioner was getting construction work done through the plaintiff respondent no. 1. As such, the respondent no. 1 plaintiff is a subcontractor of the petitioner. Date 3-6-2000 was fixed for hearing of the application exh. 5 and without giving any copy of that application to the petitioner and the copy was given to the respondent no. 2 and the learned counsel sought time to file reply even then the trial Court has passed the impugned order directing the respondent no. 2 to withhold the amount of Rs.21 lacs which was likely to be paid to the petitioner. The trial Court has committed error on the face of the record and passed the impugned order in violation of the principles of natural justice as no opportunity of hearing was given to the parties concerned and no urgency has been shown either in the application or in the impugned order that the Court cannot wait even for a day on which the application exh. 5 was kept for hearing.

5. The learned counsel for the respondent no. 1 informed that the application exh. 5 is still pending and urged that the Court concerned may be directed to pass appropriate order at the earliest possible after affording reasonable opportunity of hearing to the parties concerned.

6. In view of the fact that the application exh. 5 is still pending in the Court concerned. The Court concerned is directed to decide the application exh. 5 and the application exh. 24 after affording reasonable opportunity of hearing to the parties concerned at the earliest possible preferably within a period of one month from the date of presentation of a certified copy of this order.

7. In the facts and circumstances of this case, with the observation above the impugned order dated 2-6-2000 passed by the trial Court deserves to be quashed and set aside. Accordingly, this Revision Application is allowed and the impugned order passed by the trial Court is quashed and set aside. Rule is made absolute to the aforesaid extent, with no order as to costs.

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/JVSatwara/